IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 185 OF 2002
WITH
CIVIL APPLICATION NO. 844 OF 2003

Nilavvabai Apparaya Talle ..Appellant

Vs.

Shivmurti Rayappa Vhanutgi ..Respondent

Mr. S.S. Patwardhan for appellant.
Mr. D.K. Ghaisas for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : April 18, 2007.

P.C.:

1. Heard Mr. Patwardhan the learned counsel for the appellant-original defendant and Mr. Ghaisas the learned counsel for the respondent-original plaintiff.

2. This second appeal arises from the decree passed by the trial court in Regular Civil Suit No. 31 of 1987 on 27/9/1996 and confirmed by the Lower Appellate Court by dismissing Civil Appeal No.68 of 1996 vide his judgment and order dated 20/12/2000 and

thus the appeal has been pending for admission before this court for the last more than seven years.

3. The plaintiff had approached the trial court for the relief of declaration, possession and perpetual injunction in respect of the suit house i.e. Grampanchayat House No. 314 (1/2 share) located on City Survey No. 259 Sheet No.6 and currently City Survey No. 145. The area of the house was claimed to be 40 ft. x 15 ft. The appellant-defendant had opposed the suit on the ground that the plaintiff's vendor Laxmibai had no share in the suit house and, in fact, half of her share was in House No.319. This contention was rejected by the trial court on appreciation of all the evidence placed before it by both the parties and by relying upon the certified copy of the plaint in Regular Civil Suit No. 47 of 1980 as well as the decree passed therein, including Laxmibai's depositions at Exh.68. The plaintiff had claimed his title to the suit property on the basis of the registered sale deed at Exh.52 signed between him and Laxmibai and he claimed that he had already parted with the consideration amount of Rs.12000/-.

Certified copy of the extract of the suit property was at Exh.67 and assessment list at Exh.76 in respect of the House No.314/2. Regular Civil Suit No.47 of 1980 was dismissed and the plea of Laxmibai claiming her ownership right in respect of House No.319 thus failed as per the decree passed in that suit on 29/9/1984. These concurrent findings recorded by both the courts below do not suffer from any infirmities or illegalities.

4. On the other hand, both the courts below accepted that Laxmibai had 1/4th share in the total house property i.e. two different houses i.e. House No.314 and House No.319 and it was admitted even by the defendant that the property was partitioned and Laxmibai was given 1/2 share in one of the houses, but not in House No.314. This plea also was dismissed by both the courts below and it has been held that Laxmibai's 1/2 share as per the partition amongst four brothers (two deceased brothers' survived by their widows) is earmarked in House No.314 and the same was sold by her to the plaintiff by registered sale deed as referred to hereinabove. In these obtaining

circumstances, the substantial questions of law as framed by the learned Advocate for the plaintiff pursuant to the order passed on 20/3/2007 do not survive and none of them arise for consideration herein.

5. It was under these circumstances that both the parties agreed to explore the possibility of an amicable settlement and accordingly with the assistance of their respective learned advocates, the plaintiff and defendant have placed before me the map of House No. 314. This map indicates that the main door of the house is located on the Eastern Side and as soon as one enters the house, there is a big open space (South North) and on the Southern Side as well as Northern Side there is a common varanda of equal size. On the Western Side, there are two doors leading to the inner room and this inner room has no partition. This map clearly indicates that this house property can be divided into two equal parts simply by putting up a wall in the centre and on the East-West line. The main entrance for the respective houses could be made separately by widening the existing main

entrance and dividing it into two parts. This could be done within about two weeks time. However, the parties are not before me and, therefore, the learned counsel for both the parties are not in a position to state the period within which this partition by constructing a wall could be completed.

6. It appears possible that this wall could be completed within a period of two weeks and, therefore, the parties are directed to divide the suit house in two equal houses as expeditiously as possible and preferably by 31/5/2007 i.e. before the rainy season sets in.

7. Save and except the above directions, the second appeal stands dismissed.

8. Civil Application No. 844 of 2003 does not survive and the same shall stand disposed as such.

9. Parties to act on the basis of an authenticated copy of this order.

(B.H. Marlapalle,J.)